

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

DAVID O. RUCKER, et al.,)
)
Plaintiffs,)
)
vs.) Case No. 4:09CV670 CDP
)
US FIDELIS, INC., et al.,)
)
Defendants.)

MEMORANDUM AND ORDER

This matter is before me on my review of the file. On February 26, 2010, counsel for defendants US Fidelis, Inc. and Darain Atkinson moved to withdraw based on a conflict of interest. No new counsel has entered an appearance on behalf of these defendants. Before I ruled on the motion to withdraw, US Fidelis filed a suggestion of bankruptcy. Therefore, this action is automatically stayed as to defendant Fidelis. A problem arises if I grant the motion to withdraw now because a corporate defendant cannot represent itself in federal court. Moreover, I do not want this action to proceed with Darain Atkinson appearing pro se unless he intends to exercise his right to self-representation. There is nothing in defense counsel's motion to indicate whether Fidelis and Darain Atkinson received notice of the motion to withdraw, whether they consent to the motion, or whether they will retain new counsel. For these reasons, I am not going to rule on the pending

motion to withdraw at this time. If new counsel enters an appearance on behalf of these defendants, the motion to withdraw will be granted. Otherwise, I expect defense counsel to supplement their motion to withdraw with evidence that Fidelis and Darain Atkinson have received notice of this Order and been advised of its consequences. I also expect counsel to file an affidavit stating that Fidelis and Darain Atkinson received notice of the motion, their position on the motion to withdraw, and whether they intend to retain new counsel. If Darain Atkinson elects to proceed pro se, defense counsel should obtain and file a signed, written statement from Mr. Atkinson indicating his decision to represent himself. The supplemental materials may be filed under seal if necessary to protect the confidentiality of any communications and should be filed by April 5, 2010.

I would also like counsel for plaintiffs and Cory Atkinson to meet and confer about how and whether to proceed with this case in light of the automatic stay as to defendant Fidelis. I would like them to file a joint memorandum by April 5, 2010 setting out their positions about whether the remainder of this case should be stayed or proceed. If one or more parties believe the case should proceed, I would like the memorandum to include joint proposed amended dates for the completion of discovery and trial.

Accordingly,

IT IS HEREBY ORDERED that counsel for defendant Fidelis and Darain Atkinson shall supplement their motion to withdraw as set out above by no later than April 5, 2010.

IT IS FURTHER ORDERED that counsel for plaintiffs and Cory Atkinson shall file a joint memorandum as set out above by no later than April 5, 2010.

IT IS FURTHER ORDERED that this action is stayed as to defendant US Fidelis, Inc. only.



CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 17th day of March, 2010.